

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: MARYLAND

TRANSFER OF ASSETS

1917(b) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the lock-back date.

The agency withholds payment to institutionalized individuals for the following services:

Payments based on a level of care in a nursing facility;

Payments based on a nursing facility level of care in a medical institution;

Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

— The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905(a)(7));

Home and community care for functionally disabled and elderly adults (section 1905(a)(22));

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a)(24).

— The following other long-term care services for which medical assistance is otherwise under the agency plan:

State: MARYLAND

TRANSFER OF ASSETS

3. Penalty Date--The beginning date of each penalty period imposed for an uncompensated transfer of assets is:

X the first day of the month in which the asset was transferred;
the first day of the month following the month of transfer.

4. Penalty Period - Institutionalized Individuals--

In determining the penalty for an institutionalized individual, the agency uses:

X the average monthly cost to a private patient of nursing facility services in the State;
the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.

5. Penalty Period - Non-institutionalized Individuals--

The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;

imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

State: MARYLAND

TRANSFER OF ASSETS

6. Penalty period for amounts of transfer less than cost of nursing facility care--
- a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency:
- does not impose a penalty;
- X imposes a penalty for less than a full month, based on the proportion of the agency's private nursing facility rate that was transferred.
- b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:
- does not impose a penalty;
- X imposes a series of penalties, each for less than a full month.
7. Transfers made so that penalty periods would overlap--
The agency:
- X totals the value of all assets transferred to produce a single penalty period;
- calculates the individual penalty periods and imposes them sequentially.
8. Transfers made so that penalty periods would not overlap--
The agency:
- X assigns each transfer its own penalty period;
- uses the method outlined below;

State: MARYLAND

TRANSFER OF ASSETS

9. Penalty periods - transfer by a spouse that results in a penalty period for the individual--

(a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

(b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset--

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

X The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

X For transfers of individual income payments, the agency will impose partial month penalty periods.

X For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

 The agency uses an alternate method to calculate penalty periods, as described below:

State: MARYLAND

TRANSFER OF ASSETS

11. Imposition of a penalty would work an undue hardship--

The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency informs applicants and recipients of the undue hardship provision through the distribution of the leaflet "Some Questions and Answers About Financial Eligibility for Medicaid Nursing Home Services." The agency will use the following criteria and procedures in making undue hardship determinations:

The applicant/recipient (A/R) must demonstrate that there are no funds available to pay for medical care or other necessities. Sources that may be available to provide the funding are sons, daughters, spouses, or other persons. One of more of these persons may have been the recipient of the transferred resource (or beneficiary or trustee of the trust). If these persons were not recipients of the resource, the person(s) responsible for the transfer can negotiate access to the resource from some other person who still has the resource either in liquid or non-liquid form. An evaluation is required in each case to determine if some other source of funding or care is available if the person is denied Medicaid. Hardship generally would not be considered to exist if the resource was transferred to a son, daughter, or grandchild or other relative. It is presumed that these family members could make arrangements for the person's care and that of dependent family members. If the evidence submitted indicates that there is no reasonable way that the relative can make any of these arrangements, the local department of social services will mail a complete recording and documentation of the facts related to this conclusion to the Division of Eligibility Services, Medical Care Policy Administration. The facts and verification required to determine if the recipient of the transferred resource can make other arrangements to pay or provided the care of the Medicaid A/R, or to provide for the needs of financially dependent family members, include the following: (A) A valid copy of the tax return for the preceding calendar year. (B) All earnings pay stubs for the current year (C) All bank books, stocks, bonds, certificates, life insurance policies, etc.. Bank books must include those before and after receipt of the transferred resource. (D) All documents associated with the proceeds of the transferred resource which will show the value of any purchase of new resources from the sale proceeds of the transferred property. If an undue hardship determination is requested on the basis of deprivation of dependent family members, it must be documented that those dependent family members have applied for all public programs for which they might qualify. The Division of Eligibility Services will evaluate the facts and render a written decision to the local department as to whether or not the penalty provisions should apply or whether a hardship situation exists. The written decision will be sent to the local department within ten (10) days of the receipt of the facts from the local department. The local department will inform the A/R, in writing, of this decision, the A/R's right to file an appeal, and the steps necessary to file one.

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